

MARINE SAFETY AND SECURITY MANAGEMENT SYSTEM**TIER I – POLICY****DETERMINING THE PENALTY FOR NON-COMPLIANCE WITH INTERIM
ORDERS MADE TO PROTECT NORTH ATLANTIC RIGHT WHALES
(NARW) OR SOUTHERN RESIDENT KILLER WHALES (SRKW)**

Effective Date	Date of Revision
28-April-2020	28-May-2020
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31-August-2022	

MARINE SAFETY MANAGEMENT SYSTEM

TIER I – POLICY

DETERMINING THE PENALTY FOR NON-COMPLIANCE WITH INTERIM ORDERS MADE TO PROTECT NORTH ATLANTIC RIGHT WHALES (NARW) OR SOUTHERN RESIDENT KILLER WHALES (SRKW)

1 Policy Objective

- 1.1 This policy provides guidance for Marine Safety Inspectors (MSIs) on the assessment of an appropriate administrative monetary penalty for non-compliance with a relevant provision designated as a violation, under an *Interim Order* for the protection of North Atlantic Right Whales (NARW) or Southern Resident Killer Whales (SRKW), made by the Minister of Transport pursuant to s. 10.1(1) of the *Canada Shipping Act, 2001, S.C. 2001, c. 26* (the Act).

2 Policy Statement

- 2.1 A non-compliance may be proceeded with as a violation or as an offence in accordance with s.233 of the Act; the Minister may commence proceedings in respect of that non-compliance as a violation or recommend that it be proceeded with as an offence, but it may proceed only as one or the other.
- 2.2 Any person or vessel who fails to comply with an *Interim Order* commits a violation for the purposes of ss. 229 to 243 of the Act, as set out in s. 711 of the *Budget Implementation Act, 2018, No. 2, S.C. 2018, c. 27*, and may be issued an administrative monetary penalty ranging from \$250 to \$250,000.
- 2.3 Marine Safety and Security (MSS) will apply a gradual escalation of penalty amounts, which will conform to the prescribed range of penalties identified in the *Interim Order* and progress according to the severity of the non-compliance from the baseline dollar value, determined by the Minister for the specific non-compliance, to a maximum of \$250,000 per incident.
- 2.4 To ensure that an administrative monetary penalty has the desired deterrent effect, MSS will analyze and assess the appropriate penalty amount within the range, according to factors such as the severity of the violation, whether the violation constitutes a separate violation for each day on which it is continued, the conduct, circumstances and consequences of the violation, the location where the violation occurred, the terms and aims of the relevant legislation and the participation, character and attitude of the non-compliant party.
- 2.5 If circumstances warrant, MSS may recommend that a person who contravenes an *Interim Order* be prosecuted for an offence, pursuant to s. 40.1 of the *Act*, and that person may be

liable upon summary conviction, to a fine of not more than \$1,000,000 or to imprisonment for a term of not more than 18 months, or to both.

- 2.6 To proceed with a recommendation for prosecution, MSS will prepare a charge proposal under the guidance of the Regional Enforcement Unit (REU) while keeping with the relevant procedures of the Marine Compliance and Enforcement Manual RDIMS No # [\(10581646\)](#), and the Departmental Enforcement Standards.
- 2.7 The Domestic Vessel Regulatory Oversight & Boating Safety is responsible to coordinate, in collaboration with the Center for Enforcement Expertise (CEE) / Regional Enforcement Unit (REU) and other interested TC groups, the development of the Gradual Scale for AMP amounts for each Ministerial Interim orders for the protection of NARW and SRKW. These gradual scale for AMP amount can be found as Annexes attached to this policy document.

3 Scope

- 3.1 This policy applies solely to the application of administrative monetary penalties for contraventions of an *Interim Order* for the protection of NARW and SRKW.

4 Authority

- 4.1 This policy is authorized by the Marine Safety and Security Executive and is accordance with the objectives and authority of the *Canada Shipping Act, 2001*.

5 Responsibility/ further information

- 5.1 MSS Regional Directors are responsible for the implementation of this policy.
- 5.2 The Executive Director, Domestic Vessel Regulatory Oversight is accountable for the development, maintenance, and continuous improvement of the policy. Comments or queries related to this policy and its application should be addressed to:

Executive Director, Domestic Vessel Regulatory Oversight
 AMSD
 330 Sparks St.
 Ottawa, ON K1A 0N8

6 Related Documents

- 6.1 *Canada Shipping Act (2001) section 10.1*
- 6.2 *Marine Compliance and Enforcement manual (RDIMS# 10581646)*
- 6.3 *Departmental Enforcement Standards*
- 6.4 [*Interim Order for the Protection of North Atlantic Right Whales \(*Eubalaena glacialis*\) in the Gulf of St. Lawrence, 2022*](#)
- 6.5 [*Interim Order for the Protection of the Killer Whale \(*Orcinus orca*\) in the Waters of Southern British Columbia,*](#)

7 Date of Application

7.1 This policy comes into effect 31st August 2022

8 Date for Review or Expiry

8.1 This policy shall be reviewed 12 months after coming into force and at intervals not exceeding five years thereafter.

9 RDIMS Reference

9.1 The English version of this document is saved in RDIMS under reference number 18884380. The applied naming convention is Publication – TP13585 – Tier I-Policy - DETERMINING THE PENALTY FOR NON-COMPLIANCE WITH INTERIM ORDERS MADE TO PROTECT NORTH ATLANTIC RIGHT WHALES (NARW) OR SOUTHERN RESIDENT KILLER WHALES (SRKW).

9.2 La version française du présent document est dans le SGDDI et porte le numéro de référence 18884431. La règle d'affectation des noms est PUBLICATION – TP 13585-VOLET 1- POLITIQUE – DÉTERMINER LA SANCTION POUR UNE NON-CONFORMITÉ AUX ARRÊTÉS D'URGENCE PRIS POUR PROTÉGER LES BALEINES NOIRES DE L'ATLANTIQUE NORD (BNAN) OU LES ÉPAULARDS RÉSIDENTS DU SUD (ERS).

9.3 This is the first approved and finalized English version of this document.

10 Keywords

- Interim Order
- Administrative Monetary Penalties
- Summary Conviction
- North Atlantic Right Whales (NARW)
- Southern Resident Killer Whales (SRKW)

Annex 1 – Penalty range for the *Interim Order for the Protection of North Atlantic Right Whales (Eubalaena glacialis) in the Gulf of St. Lawrence*

GRADUAL SCALE AMP AMOUNTS							
Category of Violator	Gravity Classification of the Violation	Baseline Penalty (A)	Maximum Penalty	Aggravating Factor Level	History of Non-Compliance (Since 2017) (B)	Actual or Potential Harm: Location and Whale Presence (C)	Economic Benefit: Duration of Violation (D)
Small Vessel less than 50 m Range: \$6,000 - \$108,000	> 10 < 13 knots	\$6,000	\$27,000	None/Low	\$0	\$0	\$0
				Moderate	\$6,000	\$2,250	\$2,250
				High	\$12,000	\$4,500	\$4,500
	>= 13 < 16 knots	\$12,000	\$54,000	None	\$0	\$0	\$0
				Moderate	\$12,000	\$4,500	\$4,500
				High	\$24,000	\$9,000	\$9,000
	>= 16 < 19 knots	\$18,000	\$81,000	None/Low	\$0	\$0	\$0
				Moderate	\$18,000	\$6,750	\$6,750
				High	\$36,000	\$13,500	\$13,500
	=> 19 knots	\$24,000	\$108,000	None/Low	\$0	\$0	\$0
				Moderate	\$24,000	\$9,000	\$9,000
				High	\$48,000	\$18,000	\$18,000
Medium-sized Vessel 50 - 100m Range: \$6,000 - \$202,500	> 10 < 13 knots	\$6,000	\$27,000	None/Low	\$0	\$0	\$0
				Moderate	\$6,000	\$2,250	\$2,250
				High	\$12,000	\$4,500	\$4,500
	>= 13 < 16 knots	\$15,000	\$67,500	None/Low	\$0	\$0	\$0
				Moderate	\$15,000	\$5,625	\$5,625
				High	\$30,000	\$11,250	\$11,250
	>= 16 < 19 knots	\$30,000	\$135,000	None/Low	\$0	\$0	\$0
				Moderate	\$30,000	\$11,250	\$11,250
				High	\$60,000	\$22,500	\$22,500
	=> 19 knots	\$45,000	\$202,500	None/Low	\$0	\$0	\$0
				Moderate	\$45,000	\$16,875	\$16,875
				High	\$90,000	\$33,750	\$33,750
Large Vessel greater than 100m Range: \$6,000 - \$250,000	> 10 < 13 knots	\$6,000	\$27,000	None/Low	\$0	\$0	\$0
				Moderate	\$6,000	\$2,250	\$2,250
				High	\$12,000	\$4,500	\$4,500
	>= 13 < 16 knots	\$22,500	\$101,250	None/Low	\$0	\$0	\$0
				Moderate	\$22,500	\$8,438	\$8,438
				High	\$45,000	\$16,875	\$16,875
	>= 16 < 19 knots	\$45,000	\$202,500	None/Low	\$0	\$0	\$0
				Moderate	\$45,000	\$16,875	\$16,875
				High	\$90,000	\$33,750	\$33,750
	=> 19 knots	\$75,000	\$250,000	None/Low	\$0	\$0	\$0
				Moderate	\$50,000	\$18,750	\$18,750
				High	\$100,000	\$37,500	\$37,500

NOTES**1.** Description of the aggravating factors

Aggravating Factors	Level	Description
History of Non-Compliance (Since 2017) (B)	None/Low	No previous non-compliance
	Medium	One previous non-compliance
	High	Two or more previous non-compliance
Actual or Potential Harm: Location and Whale Presence (C)	None/Low	In Dynamic zone w/ no confirmed whale presence
	Medium	In Dynamic zone w/ confirmed whale presence OR Static or Seasonal Sector
	High	In Restricted Area
Economic Benefit: Duration of Violation (D)	None/Low	Speeding for less than 30 minutes
	Medium	Speeding for more than 30 minutes but less than 60 minutes
	High	Speeding for more than 60 minutes

2. The amount for each of the aggravating factors is added to the baseline penalty

AMP Amount = Baseline Penalty + (B) + (C) + (D)*

*To a maximum of \$250,000

3. The penalty amount may be adjusted +/- 30% on recommendation of the enforcement officer, if mitigating or aggravating factors not already specific in the table are present. If they are; then the penalty amount should be adjusted with a comprehensive justification

4. The regional director of the region responsible for the enforcement action, may convene an Enforcement Advisory Board (EAB) to assess and recommend a penalty that is below or above the value of the table, with a comprehensive justification.

Annex 2 – Penalty range for the *Interim Order for the Protection of the Killer Whale (Orcinus orca)* in the Waters of Southern British Columbia, 2020

GRADUAL SCALE AMP AMOUNTS						
Category of Violator	Baseline Penalty	Maximum Penalty	Aggravating Factor Level	History of Non-Compliance (Since 2019) (B)	Actual or Potential Harm (C)	Economic Benefit (D)
Person operating a human powered vessel of any size Range: \$250 - \$1,125	\$250	\$1,125	None/Low	\$0	\$0	\$0
			Moderate	\$250	\$94	\$94
			High	\$500	\$188	\$188
Person operating a motorized vessel of any size for a purpose other than for a commercial enterprise or Pleasure Craft less than 12m Range: \$500 - \$2,250	\$500	\$2,250	None/Low	\$0	\$0	\$0
			Moderate	\$500	\$188	\$188
			High	\$1,000	\$375	\$375
Pleasure Craft 12m to less than 24m or vessel other than Pleasure craft less than 12m Range: \$1000 - \$4,500	\$1,000	\$4,500	None/Low	\$0	\$0	\$0
			Moderate	\$1,000	\$375	\$375
			High	\$2,000	\$750	\$750
Person operating a motorized vessel of any size for a commercial enterprise or non-Pleasure Vessel 12m to less than 24m Range: \$2,000 - \$9,000	\$2,000	\$9,000	None/Low	\$0	\$0	\$0
			Moderate	\$2,000	\$750	\$750
			High	\$4,000	\$1,500	\$1,500
All Vessel 24m to less than 50m Range: \$6,000 - \$27,000	\$6,000	\$27,000	None/Low	\$0	\$0	\$0
			Moderate	\$6,000	\$2,250	\$2,250
			High	\$12,000	\$4,500	\$4,500
All Vessel 50m to less than 100m Range: \$12,000 - \$54,000	\$12,000	\$54,000	None/Low	\$0	\$0	\$0
			Moderate	\$12,000	\$4,500	\$4,500
			High	\$24,000	\$9,000	\$9,000
All Vessel 100m and greater Range: \$24,000 - \$100,000	\$24,000	\$100,000	None/Low	\$0	\$0	\$0
			Moderate	\$24,000	\$8,000	\$8,000
			High	\$44,000	\$16,000	\$16,000

NOTES**1. Description of the aggravating factors**

Aggravating Factors	Level	Description
History of Non-Compliance (Since 2019) (B)	None	No previous non-compliance
	Medium	One previous non-compliance
	High	Two or more previous non-compliance
Actual or Potential Harm (C)	None/Low	Approach Distance Within 300m to 400m of a killer whale Interim Sanctuary Zones (ISZ) Within an ISZ for less than 18 minutes Speed Limits Speed less than 13.0 knts
	Medium	Approach Distance Within 200m to 300m of a killer whale Interim Sanctuary Zones (ISZ) Within an ISZ for 18 minutes to 36 minutes Speed Limits Speed 13.0 knts but less than 16.0 Knts
	High	Approach Distance Within 200m of a killer whale. Interim Sanctuary Zones (ISZ) Within an ISZ for more than 36 minutes Speed Limits Speed 16.0 Knts or more
Economic Benefit: Duration of Violation (D)	None/Low	No economic benefits (such as human powered vessels or pleasure craft) Speed Limits Speeding less than 30 minutes
	Medium	Approach Distance / Interim Sanctuary Zones (ISZ) For Persons and Vessels under 50m: Not engaging in a commercial whale-watching or ecotourism activity, but gaining another economic benefit from approaching a whale or entering an ISZ (e.g., fishing vessels accessing fishing waters, cargo or Passenger Vessel getting to destination faster) Speed Limits Speeding 30 minutes but less than 60 minutes
		For Vessels 50m or greater: N/A
	High	Approach Distance / Interim Sanctuary Zones (ISZ) For Persons and Vessels under 50m: a) Has a Ministerial authorization under the Interim Order; or b) Engaging in a commercial whale-watching or ecotourism activity. Speed Limits Speeding 60 minutes or more.
For Vessels 50m or greater: Any economic benefit		

2. The amount for each of the aggravating factors is added to the baseline penalty
AMP Amount = Baseline Penalty + (B) + (C) + (D)*

*To a maximum of \$100,000

3. The penalty amount may be adjusted +/- 30% on recommendation of the enforcement officer, if mitigating or aggravating factors not already specific in the table are present. If they are then the penalty amount should be adjusted with a comprehensive justification

4. The regional director of the region responsible for the enforcement action, may convene an Enforcement Advisory Board (EAB) to assess and recommend a penalty that is below or above the value of the table, with a comprehensive justification, up to a maximum of \$250,000 per violation.

Annex 3 – Penalty range for the *Interim Order for the Protection of North Atlantic Right Whales (Eubalaena glacialis)* in and near the Shediac Valley

GRADUAL SCALE AMP AMOUNTS							
Category of Violator	Gravity Classification of the Violation	Baseline Penalty (A)	Maximum Penalty	Aggravating Factor Level	History of Non-Compliance (In Restricted Area) (B)	Potential Damage by Prohibited Vessel (C)	Duration of Violation (D)
Small Vessel less than 50 m Range: \$6,000 - \$96,000	<= 8 Knots*	\$3,000	\$17,250	None/Low	\$0	\$6,000	\$0
				Moderate	\$3,000		\$1,125
				High	\$6,000		\$2,250
	> 8 < 10 knots	\$6,000	\$28,500	None/Low	\$0	\$6,000	\$0
				Moderate	\$6,000		\$2,250
				High	\$12,000		\$4,500
	=> 10 < 13 knots	\$12,000	\$51,000	None	\$0	\$6,000	\$0
				Moderate	\$12,000		\$4,500
				High	\$24,000		\$9,000
	=> 13 < 16 knots	\$18,000	\$73,500	None/Low	\$0	\$6,000	\$0
				Moderate	\$18,000		\$6,750
				High	\$36,000		\$13,500
	=> 16 Knots	\$24,000	\$96,000	None/Low	\$0	\$6,000	\$0
				Moderate	\$24,000		\$9,000
				High	\$48,000		\$18,000
Medium-sized Vessel 50 - 100m Range: \$6,000 - \$180,750	<= 8 Knots*	\$3,000	\$23,250	None/Low	\$0	\$12,000	\$0
				Moderate	\$3,000		\$1,125
				High	\$6,000		\$2,250
	> 8 < 10 knots	\$6,000	\$34,500	None/Low	\$0	\$12,000	\$0
				Moderate	\$6,000		\$2,250
				High	\$12,000		\$4,500
	=> 10 < 13 knots	\$15,000	\$68,250	None/Low	\$0	\$12,000	\$0
				Moderate	\$15,000		\$5,625
				High	\$30,000		\$11,250
	=> 13 < 16 knots	\$30,000	\$124,500	None/Low	\$0	\$12,000	\$0
				Moderate	\$30,000		\$11,250
				High	\$60,000		\$22,500
	=> 16 Knots	\$45,000	\$180,750	None/Low	\$0	\$12,000	\$0
				Moderate	\$45,000		\$16,875
				High	\$90,000		\$33,750
Large Vessel greater than 100m Range: \$6,000 - \$250,000	<= 8 Knots*	\$3,000	\$29,250	None/Low	\$0	\$18,000	\$0
				Moderate	\$3,000		\$1,125
				High	\$6,000		\$2,250
	> 8 < 10 knots	\$6,000	\$40,500	None/Low	\$0	\$18,000	\$0
				Moderate	\$6,000		\$2,250
				High	\$12,000		\$4,500
	=> 10 < 13 knots	\$22,500	\$102,375	None/Low	\$0	\$18,000	\$0
				Moderate	\$22,500		\$8,438
				High	\$45,000		\$16,875
	=> 13 < 16 knots	\$45,000	\$186,750	None/Low	\$0	\$18,000	\$0
				Moderate	\$45,000		\$16,875
				High	\$90,000		\$33,750
	=> 16 Knots	\$75,000	\$250,000	None/Low	\$0	\$18,000	\$0
				Moderate	\$75,000		\$28,125
				High	\$150,000		\$56,250

*Applies for Prohibited vessel only

NOTES**1. Description of the aggravating factors**

Aggravating Factors	Level	Description
History of Non-Compliance (In Restricted Area) (B)	None/Low	No previous non-compliance
	Medium	One previous non-compliance
	High	Two or more previous non-compliance
Potential Damage by Prohibited vessel (C)	None/Low (\$6,000)	Small Vessel
	Medium (\$12,000)	Medium Size vessel
	High (\$18,000)	Large Vessel
Duration of Violation (D)	None/Low	Duration of violation for less than 30 minutes
	Medium	Duration of violation more than 30 minutes but less than 60 minutes
	High	Duration of violation for more than 60 minutes

2. The amount for each of the aggravating factors is added to the baseline penalty

AMP Amount for Exempted Vessel = Baseline Penalty + (B) + (D)*

AMP Amount for Prohibited Vessel = Baseline Penalty + (B) + (C) + (D)*

*To a maximum of \$250,000

3. The penalty amount may be adjusted +/- 30% on recommendation of the enforcement officer, if mitigating or aggravating factors not already specific in the table are present. If they are then the penalty amount should be adjusted with a comprehensive justification

4. The regional director of the region responsible for the enforcement action, may convene an Enforcement Advisory Board (EAB) to assess and recommend a penalty that is below or above the value of the table, with a comprehensive justification.